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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,189	01/29/2001	Sheldon Sturgis	13578.1US01	9119
23552	7590	11/28/2007		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER PASCUA, JES F	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/772,189

Applicant(s)

STURGIS ET AL.

Examiner

Jes F. Pascua

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3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,6,7,10-12,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,10-12,24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/20/2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,978,025 to Fougères. See Fig. 6

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 7 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application No. 0 630 822 to Etesse and European Patent Application No. 0 258 679 to Berthelsen et al. and Fougères.

Etesse discloses the claimed device except for the handle having a reinforcing structure and the first and second sidewalls being heat sealed to one another in a heat-sealed region surrounding the handle. Berthelsen et al. discloses that it is known in the art to provide a reinforcing structure adjacent an analogous handle. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the handle of Etesse with the reinforcing structure of Berthelsen et al. in order to increase the tear resistance of the handle. Moreover, Berthelsen et al. discloses that it is known in the art to heat seal the first and second sidewalls in the area of the handle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the handle of Etesse with heat seal between the first and second sidewalls in the area of the handle, as taught by Berthelsen et al., in order to optimize the utilization of the material used for the manufacture of the bag. Furthermore, Etesse discloses the claimed device, as discussed above, except for the major axis of the oblong-shaped handle being parallel to the vertical centerline of the bag. Fougères discloses that it is known in the art to provide a handle having an oblong shape with its major axis parallel to the vertical centerline of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the oblong-shaped handle of Etesse such that its major axis is parallel

to the vertical centerline, as taught by Fougères, since it has been held that rearranging parts of an invention involves only routine skill in the art.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Etesse, Berthelsen et al. and Fougères, as applied to claim 1 above, and further in view of Japanese Patent No. 3-226460 to Toshiji Shimamoto.

Etesse, Berthelsen et al. and Fougères disclose the claimed device, as discussed above, except for the hand hole having a ring positioned therein. Toshiji Shimamoto discloses that it is known in the art to provide a ring with the hand hole of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hand hole of Etesse with the ring of Toshiji Shimamoto, in order to reinforce the hand hole.

7. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,782,562 to Anspacher and U.S. Patent No. 4,971,453 to Rantanen.

Anspacher shows a bag comprising first and second sidewalls, an inherent centerline between the top and bottom of the bag, a pouring region formed on one side (i.e., above) the centerline, a handle (88) coupled to the bag (see Fig. 6), the entire handle disposed on an opposite side of (i.e., below) the centerline and catercorner (or in the diagonally opposite corner) from the pouring region and defined by an oblong aperture passing through the first and second sidewalls; oblong aperture comprising a

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major axis parallel to the centerline. However, Anspacher does not show a reinforcing structure attached to the bag adjacent to the handle and extending beyond an edge of the first and second sidewalls. Rantanen discloses that it is known in the art to provide a reinforcing structure (14) adjacent an analogous oblong, handle aperture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the handle of Anspacher with the reinforcing structure of Rantanen, in order to strengthen the handle and prevent tearing. It is noted that Rantanen clearly shows the reinforcing structure having a vertical length less than the first and second sidewalls and a horizontal length less than the first and second sidewalls. Moreover, folding the reinforcing structure to cover both sides of the handle, as set forth in Rantanen, would inherently result in the reinforcing structure extending beyond an edge of the first and second sidewalls of Anspacher.

As a note, the bag of Anspacher with pouring region depicted in Fig. 6 meets the limitations "the bag comprising a rectangular shape including four corners" and "the bag comprising a rectangular shape with four corners and four edges", since the claimed "rectangular shape" can found in less than the entire periphery of the Anspacher bag.

Furthermore, applicant's nomenclature for the "centerline" does not define over the Anspacher bag, which meets applicant's claimed relationship and association between the "pouring region" and the "handle" with respect to a centerline.

Regarding claim 25, Anspacher and Rantanen disclose the claimed invention except for reinforcing structure comprising a layer of heat-sealable material. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to provide a layer of heat-sealable material in the reinforcing structure of Rantanen, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### ***Response to Arguments***

8. Applicant's arguments filed 09/14/2007 have been fully considered but they are not persuasive.

The Examiner maintains Fougères meets the limitation "a reinforcing structure comprising one layer of additional material, the reinforcing structure attached to the adjacent to the handle, the reinforcing structure having a vertical length less than the first and second sidewalls, the reinforcing structure having a horizontal length less than the first and second sidewalls". The reinforcing structure of Fougères comprises one layer of additional material (28) that is attached "adjacent to the handle". Furthermore, Fig. 6 of Fougères clearly shows the reinforcing structure (28) having a vertical length less than the first and second sidewalls, the reinforcing structure having a horizontal length less than the first and second sidewalls.

9. The declaration under 37 CFR 1.132 filed 12/20/2006 is insufficient to overcome the rejection of claims 1, 7 and 10-12 under 35 U.S.C. 103(a) as being unpatentable over Etesse, Berthelsen et al. and Fougères and claim 6 under 35 U.S.C. 103(a) as being unpatentable over Etesse, Berthelsen et al., Fougères and Toshiji Shimamoto as

set forth in the last Office action because: Gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985), or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988).

10. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jes F. Pascua  
Primary Examiner  
Art Unit 3782

JFP